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Attorneys for PLAINTIFFS and CLASS COUNSEL

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

ROBERT ADAMS, CHAD
 WELCH, JOSEPH WILLIAMS, and
 LAVAIL CHARLES, on behalf of
 themselves and all others similarly
 situated, and on behalf of the general
 public,

Plaintiffs,

v.

NEWELL RUBBERMAID, INC., a
 Delaware corporation, SMX CORP,
 INC., an Illinois corporation,
 SEATON CORP, INC., an Illinois
 Corporation, and DOES 1 through
 50, inclusive,

Defendants.

Case No.: EDCV 08-1499 JTM
 (CTx)

**NOTICE OF MOTION AND
 UNOPPOSED MOTION FOR
 FINAL APPROVAL OF CLASS
 ACTION SETTLEMENT**

DATE: None

TIME: None

JUDGE: Hon. J. Thomas Marten

1 **TO THE ABOVE-ENTITLED COURT, ALL PARTIES AND**
2 **THEIR ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE THAT** Plaintiffs Robert Adams, Chad
4 Welch, Joseph Williams, and LaVail Charles will move and hereby do
5 move, without opposition by Defendants, for an Order granting final
6 approval of this class action settlement. This application is made pursuant
7 to Federal Rule of Civil Procedure 23(e), which requires court approval of
8 the settlement of class actions.

9 This Motion will be based on the Memorandum of Points and
10 Authorities, the Joint Stipulation of Settlement and Release Between
11 Plaintiffs and Defendants (the “Stipulation” or “Settlement”), the
12 Declaration of Scott A. Miller (“Miller Decl.”), the Declaration Jackie
13 Hitomi of CPT Group, Inc., and such evidence or oral argument as may be
14 presented at the request of the Court, and on the complete records and file
15 herein.

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1 Dated: January 13, 2010

Respectfully Submitted,

2 GAINES & GAINES, APLC

3 By: /s/

4 Kenneth S. Gaines, Esq.

5 Daniel F. Gaines, Esq.

6 Attorneys for Plaintiffs and Class
Counsel

7 LAW OFFICES OF SCOTT A.
8 MILLER, APC

9 By: /s/

10 Scott A. Miller, Esq.

11 Attorneys for Plaintiffs and Class
12 Counsel

13 STEVEN L. MILLER, APLC

14 By: /s/

15 Steven L. Miller, Esq.

16 Attorneys for Plaintiffs and Class
17 Counsel

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2

3 **I. INTRODUCTION**

4 By this unopposed motion, Plaintiffs Robert Adams, Chad Welch,
5 Joseph Williams, and LaVail Charles (“Plaintiffs”) and the members of the
6 six settlement classes (collectively “Class Members”, “Class” or
7 “Settlement Class”) seek final approval of the class action settlement
8 reached with Defendants SMX, Inc., Seaton Corp., and Newell
9 Rubbermaid, Inc. (“Defendants”).

10 By a separate motion, filed concurrently herewith, Plaintiffs move
11 for an award of attorneys’ fees and costs, approval of the claims
12 administrator’s fees, and approval of the enhancement awards to the Class
13 Representatives.

14 Subject to Court approval, Plaintiffs have settled the Released
15 Claims of the Class Members as defined in the Joint Stipulation of
16 Settlement and Release Between Plaintiffs and Defendants (the
17 “Stipulation”) against Defendants for up to \$977,000. *See* Miller Decl.,
18 Exhibit (“Ex.”)¹ A (Stipulation). This class action settlement
19 (“Settlement”) resolves the named Plaintiffs’ and Class Members’ pending
20 Released Claims² against Defendants.

21 This motion follows a successful settlement administration following
22 the Court’s September 23, 2009 Order granting preliminary approval of the
23

24 ¹ All “Ex.” references herein are to the exhibits attached to the Declaration of
25 Scott A. Miller in Support of the Motion for Final Approval of Class Settlement
submitted herewith, unless otherwise noted.

26 ² All capitalized terms are defined in the Stipulation and incorporated by reference
27 herein.

1 Settlement. *See* Ex. B.

2 As discussed below, the proposed Settlement satisfies all of the
3 criteria for final settlement approval under federal law because it is fair,
4 adequate, and reasonable. Ex. A; *see Churchill Village, L.L.C. v. GE*, 361
5 F.3d 566, 575 (9th Cir. 2004). The positive response of the Class Members
6 to the Settlement provides strong support that final settlement approval is
7 appropriate. To date, 631 Class Members have submitted approved claim
8 forms seeking to participate in the Settlement.³ Declaration of Jackie
9 Hitomi of CPT Group, Inc. (“CPT”), the claims administrator for this action
10 (“Hitomi Decl.”) at ¶ 17. Notably, not a single Class Member has objected
11 to any of the terms of the Settlement and only one Class Member has
12 chosen to opt out. *See id.* at ¶¶ 11, 15; Miller Decl. at ¶¶ 26, 44, 56.

13 If the Settlement receives final approval, the State of California’s
14 Labor and Workforce Development Agency (“LWDA”) will receive
15 \$18,750 for education and enforcement of labor laws. Ex. A at ¶¶ 44(a)(i),
16 44(d)(i). The Settlement allocates \$6,250 for the members of the
17 Seaton/SMX Labor Code Section 2699 Class and the Newell Rubbermaid
18 Labor Code Section 2699 Class. *Id.* Based on the approved claims
19 submitted by Class Members to date, approximately 212 members of the
20 Seaton/SMX Labor Code Section 2699 Class and 17 members of the
21 Newell Rubbermaid Labor Code Section 2699 Class have submitted valid
22 claims and will receive monetary settlement awards calculated on a
23 prorated basis based on each Qualified Claimant’s number of pay periods
24 during the applicable class period. *See* Hitomi Decl. at ¶ 18; Ex. A at ¶¶
25 44(a)(i), 44(d)(i). All \$6,250 allocated to the Labor Code Section 2699

26
27 ³ The Parties have agreed to accept all late-filed claims through January 7, 2010.

1 Classes will be distributed to the Qualified Claimants. *Id.*

2 The Settlement allocates up to \$567,775.32 for the Seaton/SMX
3 Labor Code Section 212/226 Class. Ex. A at ¶ 44(e)(i). Based on the
4 claims made to date, approximately 612 members of this Class will receive
5 monetary settlement payments averaging \$68.80 each.⁴ See Hitomi Decl. at
6 ¶ 18.

7 The Settlement allocates up to \$69,724.68 for the Newell
8 Rubbermaid Labor Code Section 212 Class. Ex. A at ¶ 44(b)(i).
9 Approximately 25 members of this Class will receive monetary settlement
10 payments averaging \$255.53 each. See Hitomi Decl. at ¶ 18.

11 The Settlement allocates up to \$50,000 for the Seaton/SMX Hourly
12 Employee Class. Ex. A at ¶ 44(f)(i). Approximately 612 members of this
13 Class will receive monetary settlement payments averaging \$6.96 each.
14 See Hitomi Decl. at ¶ 18.

15 The Settlement allocates up to \$7,500 for the Newell Rubbermaid
16 Labor Code Section 226/Hourly Employee Class. Ex. A at ¶ 44(c)(i).
17 Approximately 18 members of this Class will receive monetary settlement
18 payments averaging \$60.14 each. See Hitomi Decl. at ¶ 18.

19 In addition, as part of the Settlement, each of the Defendants has
20 made arrangements so that their current and future California employees
21 can take advantage of free check cashing services that are now in place for
22 them. Ex. A at ¶ 34. Because the Settlement achieves outstanding results
23 for the Settlement Classes, all of Defendants' current and future employees
24 and the State of California, Plaintiffs respectfully request, on behalf of the
25

26
27 ⁴ Some individuals may be members of more than one settlement class.

1 Classes, that the Court approve the Settlement as fair, adequate, and
2 reasonable, and enter judgment.

3 By a separate unopposed motion filed concurrently, Plaintiffs move
4 for an order approving an attorneys' fee award of \$189,000 and approving
5 reimbursement of costs of \$5,000 to Class Counsel as part of the Settlement
6 in this case. Ex. A at ¶ 57. Plaintiffs also request the Court confirm the
7 enhancement award agreed to be paid to Plaintiffs Robert Adams, Chad
8 Welch, Joseph Williams, and LaVail Charles in the amount of \$2,500 each.
9 See Ex. A at ¶ 49(A). Finally, Plaintiffs seek approval of \$53,000 in
10 administration expenses to be paid to CPT Group, Inc., the firm retained to
11 administer the settlement. Ex. A at ¶ 50.

12 **II. PROCEDURAL HISTORY AND SUMMARY OF CLAIMS**

13 On September 12, 2008, Plaintiffs brought this action in the Superior
14 Court of the State of California, County of San Bernardino, on behalf of
15 themselves and a proposed class of former and current employees of each of
16 the Defendants. On October 10, 2008, Plaintiffs filed a First Amended
17 Complaint. In the First through Fifth Causes of Actions, it alleges that
18 Defendants 1) issued their employees paychecks drawn on out-of-state
19 banks with no branches in California where they could be cashed on
20 demand, without a fee (Labor Code § 212); 2) failed to pay all employees all
21 wages owed (Labor Code § 1194); 3) failed to accurately itemize
22 employees' wage statements (Labor Code § 226(a),(e)); 4) failed to pay
23 employees all wages due timely upon termination or resignation (Labor
24 Code §§ 201-203); and 5) failed to reimburse expenses incurred by
25 employees in the performance of their job duties (Labor Code § 2802).
26 Miller Decl. at ¶ 5.
27
28

1 The gravamen of Plaintiffs' complaint is that they and proposed Class
2 Members had to resort to paying check cashing fees to cash their paychecks,
3 which were deducted from their wages when they presented their paychecks
4 to be cashed. In addition, Plaintiffs allege that the proposed Class Members
5 sometimes could not receive their wages on demand because a hold was
6 placed on their out-of-state paychecks. Miller Decl. at ¶ 6.

7 The sixth and seventh causes of action in the First Amended
8 Complaint seek restitution under Business and Professions Code §§ 17200,
9 *et seq.* and penalties under Labor Code §§ 2699, *et seq.* Miller Decl. at ¶ 7.

10 On October 24, 2008, Defendant Newell answered the First Amended
11 Complaint, denying all of Plaintiffs' allegations.

12 On October 27, 2008, Defendants Seaton/SMX removed the Action
13 to this Court, pursuant to the Class Action Fairness Act, 28 U.S.C. §
14 1441(b). Defendant Newell joined in the Notice of Removal.

15 On October 31, 2008, Seaton/SMX filed a motion to dismiss and
16 strike portions of Plaintiffs' First Amended Complaint. The hearing on this
17 motion was continued pending settlement discussions.

18 It was, and continues to be, each of the Defendants' position that their
19 employment practices with respect to the named Plaintiffs and the proposed
20 Class Members were always, and continue to be, in compliance with
21 California law. They deny all liability to Class members. Miller Decl. at ¶¶
22 8-9.

23 The Parties agreed to mediate all claims. Prior to mediation, the
24 Parties exchanged substantial informal discovery. Miller Decl. ¶¶ 10-11.
25 To make the mediation session as productive as possible, Plaintiffs' counsel
26 requested that Defendants produce detailed information regarding the size of
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1 of the putative class, its policies as they relate to the allegations in the First
2 Amended Complaint, and their issuance of paychecks during the relevant
3 time period. *Id.* Defendants agreed and produced significant, relevant
4 information to Plaintiffs' counsel which enabled the Parties to have a
5 meaningful discussion of the merits of the case.

6 On December 16, 2008, the Parties participated in an 18 hour
7 mediation session with Hon. Alexander Williams III (L.A.S.C., Retired),
8 which resulted in an agreement in principle. An additional four months
9 were required to reach a final settlement. In April, 2009, a formal
10 settlement was reached. All of the terms of the Parties' agreement are set
11 forth in the Stipulation. Miller Decl. at ¶ 11.

12 **A. Preliminary Approval, Notice and the Claims Process**

13 On September 14, 2009, Plaintiffs moved the Court for an order
14 preliminarily approving the Settlement and provisionally certifying the
15 Settlement Classes. **By Order dated September 23, 2009, the Court**
16 **granted the joint motion and provisionally certified the Settlement**
17 **Classes, finding that the Settlement was in the range of reasonableness**
18 **and fairness that could ultimately be given final approval.** *See* Ex. B.
19 The Court also approved the distribution of the Notice of Proposed Class
20 Action Settlement and Final Fairness and Approval Hearing ("Notice") to
21 Class Members. Ex. B at ¶¶ 6-8.

22 On September 1, 2009 and September 30, 2009, pursuant to 28
23 U.S.C. § 1715(b), Defendants mailed notices to the appropriate State and
24 Federal officials of the proposed class action settlement. Miller Decl. at ¶
25 13; *see also*, Docket Nos. 24 and 25 (Proofs of Notification). Because
26 more than 90 days have passed since the date of the notice and no
27

1 objections have been received from any officials, a final order and
2 judgment may now be entered. *See* 28 U.S.C. § 1715(d).

3 Pursuant to the Court's preliminary order, on October 23, 2009, CPT
4 mailed the Notice to 10,432 Class Members. Hitomi Decl. at ¶ 5. As of
5 January 7, 2010, there were 621 approved claims. *Id.* at ¶ 18. Notably, **no**
6 **Class Member objected to the Settlement, and only one Class Member**
7 **chose to opt out.** *Id.* at ¶¶ 11, 15; *see also*, Miller Decl. at ¶¶ 17, 26, 44, 56.

8 9 **B. Summary of the Settlement Terms**

10 **1. Benefits to the Settlement Class Members**

11
12 The Stipulation provides for six settlement classes:

13 a. The Seaton/SMX Labor Code Section 212/226 Class is
14 composed of all California current and former employees of Seaton
15 and/or SMX who received wages in the form of checks issued by an
16 out of state bank with no in state address for presentation in the State
17 of California between September 12, 2004 and September 23, 2009.
18 Up to \$567,775.32 has been allocated to settle the claims of this
19 class, to be distributed to those Class Members who submit timely
20 claim forms verifying, among other things, that they were employed
21 by Seaton Corp. or SMX, Inc. at some point during the period
22 September 12, 2004 and September 23, 2009, that they received one
23 or more live paychecks from Seaton Corp. or SMX, Inc. drawn on a
24 LaSalle Bank account with an address in Illinois, and that either 1)
25 they paid a fee to cash one or more such paychecks and/or had a hold
26 placed on one or more such paychecks, or 2) they suffered an out-of-

1 pocket loss, verified by receipts or other similar documentation, as a
2 result of Defendants' failure to provide itemized wage statements.
3 Stip. at ¶ 44(e). Members of this Settlement Class shall receive
4 \$567,775.32 divided by the total number of paychecks issued by
5 Seaton Corp. and SMX, Inc. between September 12, 2004 and the
6 September 23, 2009 for each paycheck issued to a Class Member, up
7 to a maximum of 12 paychecks. *Id.* As of January 7, 2010, 612
8 Seaton/SMX Labor Code Section 212/226 Class Members had made
9 approved claims averaging \$68.80 each. Hitomi Decl. at ¶ 18.

10 b. The Newell Rubbermaid Labor Code Section 212 Class
11 is composed of all California current and former employees of
12 Newell Rubbermaid who received wages in the form of checks
13 issued by an out of state bank with no in state address for
14 presentation in the State of California between September 12, 2004
15 and September 23, 2009. Up to \$69,724.68 has been allocated to
16 settle the claims of this class, to be distributed to those Class
17 Members who submit timely claim forms verifying, among other
18 things, that they were employed by Newell Rubbermaid at some
19 point during the period September 12, 2004 and September 23, 2009,
20 that they received paychecks drawn on a Bank of America Account
21 in Atlanta, Georgia, from Defendant Newell Rubbermaid, and that
22 they incurred a fee to cash such a paycheck on one or more occasions
23 or incurred a hold placed on one or more paychecks. Stip. at ¶ 44(b).
24 Members of this Settlement Class shall receive \$69,724.68 divided
25 by the total number of paychecks issued by Newell Rubbermaid to its
26 California employees between September 12, 2004 and September
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1 September 23, 2009, for each paycheck issued to a Class Member, up
2 to a maximum of 12 paychecks. *Id.* As of January 7, 2010, 25
3 Newell Rubbermaid Labor Code Section 212 Class_Members had
4 made approved claims averaging \$255.53 each. Hitomi Decl. at ¶ 18.

5 c. The Seaton/SMX Labor Code Section 2699 Class is
6 composed of all California current and former employees of Seaton
7 and/or SMX who received wages in the form of checks issued by an
8 out of state bank with no in state address for presentation in the State
9 of California between September 12, 2007 and September 23, 2009.
10 \$22,222.23 has been allocated to settle the claims of this class.
11 Pursuant to Labor Code § 2699(i), 75% of that amount (\$16,666.67)
12 will be distributed to the California Labor and Workforce
13 Development Agency ("LWDA") for enforcement of labor laws and
14 education of employers. All of the remaining 25% (\$5,555.56) will
15 be distributed to Seaton/SMX Labor Code Section 2699 Settlement
16 Class members in proportion to their weeks worked during the
17 relevant time period. Stip. at ¶ 44(d). The entire \$5,555.56 will be
18 paid out to members of this class who file timely and valid claims.
19 *Id.* As of January 7, 2010, 212 Seaton/SMX Labor Code Section
20 2699 Class Members had made approved claims averaging \$27.29
21 each. Hitomi Decl. at ¶ 18.

22 d. The Newell Rubbermaid Labor Code Section 2699
23 Class is composed of all California current and former employees of
24 Newell Rubbermaid who received wages in the form of checks
25 issued by an out of state bank with no in state address for
26 presentation in the State of California between September 12, 2007
27

1 and September 23, 2009. \$2,777.77 has been allocated to settle the
2 claims of this class. Pursuant to Labor Code § 2699(i), 75% of that
3 amount (\$2,083.33) will be distributed to the California Labor and
4 Workforce Development Agency ("LWDA") for enforcement of
5 labor laws and education of employers. All of the remaining 25%
6 (\$694.44) will be distributed to Newell Rubbermaid Labor Code
7 Section 2699 Settlement Class members in proportion to their weeks
8 worked during the relevant time period. The entire \$694.44 will be
9 paid out to members of this class who file timely and valid claims.
10 Stip. at ¶ 44(a). As of January 7, 2010, 17 Newell Rubbermaid
11 Labor Code Section 2699 Class Members had made approved claims
12 averaging \$40.85. Hitomi Decl. at ¶ 18.

13 e. The Seaton/SMX Hourly Employee Class is composed
14 of all persons who are employed or have been employed as hourly
15 employees by Seaton and/or SMX in the State of California between
16 September 12, 2004 and September 23, 2009. Up to \$50,000 has
17 been allocated to settle the claims of this class, to be distributed to
18 those Class Members who submit timely claim forms verifying,
19 among other things, that they were employed by Seaton Corp. or
20 SMX, Inc. at some point during the period September 12, 2004 and
21 September 23, 2009, the number of weeks they worked, and that they
22 worked hours for which they were not paid in full and/or in a timely
23 manner. Stip. at ¶ 44(f). Members of this Settlement Class shall
24 receive \$50,000 divided by the total number of weeks worked by
25 Seaton Corp. and SMX, Inc. California employees between
26 September 12, 2004 and September 23, 2009, times the number of
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1 weeks they worked for Seaton Corp. or SMX, Inc. during that period.
2 *Id.* As of January 7, 2010, 612 Seaton/SMX Hourly Employee Class
3 Members had made approved claims averaging \$6.96. Hitomi Decl.
4 at ¶ 18.

5 f. The Newell Rubbermaid Labor Code Section
6 226/Hourly Employee Class is composed of all persons who are
7 employed or have been employed as hourly employees by Newell
8 Rubbermaid in the State of California between September 12, 2004
9 and September 23, 2009. Up to \$7,500 has been allocated to settle
10 the claims of this class, to be distributed to those Class Members
11 who submit timely claim forms verifying, among other things, that
12 they were employed by Newell Rubbermaid at some point during the
13 period September 12, 2004 and September 23, 2009, the number of
14 weeks they worked, and that they worked hours for which they were
15 not paid in full and/or in a timely manner. Stip. at ¶ 44(c). Each
16 claimant shall be entitled to an amount equal to \$7,500 divided by
17 the total number of weeks worked by all Newell Rubbermaid
18 California employees between September 12, 2004 and September
19 23, 2009, times the number of weeks they worked for Newell
20 Rubbermaid during that period. *Id.* As of January 7, 2010, 18
21 Newell Rubbermaid Labor Code Section 226/Hourly Employee Class
22 Members had made approved claims averaging \$60.14 each. Hitomi
23 Decl. at ¶ 18.

24 Members of one class may be members of one or more other classes.
25 The members of the settlement classes are referred to collectively as the
26 "Class Members," and the six classes are referred to collectively as the
27

1 “Class.” For settlement purposes only, the Parties have stipulated that the
2 six settlement classes satisfy the requirements of Federal Rule of Civil
3 Procedure 23 for class certification. Stip. at ¶¶ 16, 25-29.

4 **2. Other Settlement Terms**

5 Without admitting liability, each of the Defendants has made
6 arrangements so that their current and future California employees can take
7 advantage of free check cashing services that are now in place for them.
8 Ex. A at ¶ 34.

9 The Parties agreed to the designation of Gaines & Gaines, APLC,
10 Steven L. Miller, APLC, and the Law Offices of Scott A. Miller, APC as
11 counsel for the Settlement Classes for all purposes in the case (“Class
12 Counsel”). Ex. A at ¶ 4.

13 The Parties also agreed that Class Counsel will seek, and Defendant
14 and Defendant’s Counsel will not dispute, the Court’s approval of an
15 attorneys’ fee award in an amount not to exceed \$189,000 (equivalent to
16 19.3% of the total settlement value) to compensate Class Counsel for all
17 work performed and to be performed through final dismissal of the case and
18 complete implementation of the Settlement. Ex. A at ¶ 57. The Parties also
19 agreed that Class Counsel will be paid an amount not to exceed \$5,000 to
20 cover out-of-pocket costs incurred, subject to verification of costs by the
21 Court. *Id.* The Parties have agreed that up to \$152,530 for Class Counsel’s
22 awarded attorneys’ fees and costs shall be deducted from the Seaton/SMX
23 Maximum Settlement Amount and up to \$41,470 shall be deducted from
24 the Newell Rubbermaid Maximum Settlement Amount. *Id.*

25 The Stipulation also provides that, subject to the Court’s approval,
26 Plaintiffs Robert Adams, Chad Welch, Joseph Williams, and LaVail
27

1 Charles will each receive an enhancement of up to \$2,500 for serving as
2 Class Representatives. Ex. A at ¶ 49(A).

3 The Parties selected CPT as the neutral claims administrator to perform all
4 acts related to all payments to Plaintiffs, Class Members, the LWDA, and
5 Class Counsel. Ex. A at ¶ 55. CPT handled all communications to and
6 from Class Members, including determining (within the parameters of the
7 Settlement) a Class Member's eligibility to participate in this Settlement.
8 *Id.* The Stipulation allocated up to \$53,000 for claims administration fees,
9 based on the sending of notices to over 10,400 employees. *Id.* at ¶ 50, 55

10 **III. ARGUMENT**

11
12 The policy of the federal courts is to encourage settlement before
13 trial. *See Churchill Village*, 361 F.3d at 575 (noting "strong judicial policy"
14 favoring settlements, provided they were reached through arms-length,
15 non-collusive negotiations); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
16 1029 (9th Cir. 1998) (endorsing the trial court's "proper deference to the
17 private consensual decision of the parties" when approving a settlement);
18 *Franklin v. Kaypro*, 884 F.2d 1222, 1225 (9th Cir. 1989). "Litigation
19 settlements offer parties and their counsel relief from the burdens and
20 uncertainties inherent in trial...[t]he economics of litigation are such that
21 pretrial settlement may be more advantageous for both sides than
22 expending the time and resources inevitably consumed in the trial process."
23 *Franklin*, 884 F.2d at 1225.

24 **A. The Notice Provided was the Best Practicable Under the** 25 **Circumstances**

26 Federal Rule of Civil Procedure 23(c)(2) requires that the class
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1 members receive “the best notice practicable under the circumstances.”
2 Fed. R. Civ. P. 23(c)(2); *see also*, *Churchill Village*, 361 F.3d at 575.
3 “Notice is satisfactory if it ‘generally describes the terms of the settlement
4 in sufficient detail to alert those with adverse viewpoints to investigate and
5 to come forward and be heard.’” *Churchill Village*, 361 F.3d at 575;
6 *Torrise v. Tuscon Elec. Power Co.*, 8 F.3d 1370, 1374 (9th Cir. 1993)
7 (notice must present a fair recital of the subject matter and give class
8 members an opportunity to be heard).

9 On September 23, 2009 the Court granted preliminary approval of
10 the Settlement and authorized the distribution of the proposed Notice. *See*
11 Ex. B (September 23, 2009 Order); *see also*, Ex. A (Stipulation, Exhibit 1
12 (Notice)). The court-approved Notice advised Class Members of the
13 essential terms of the Settlement, defined the Settlement Classes, set forth
14 the procedure for opting out of the Classes or filing objections to the
15 Settlement and provided specifics on the date, time and place of the final
16 fairness hearing. *See* Ex. A (Stipulation, Exhibit 1). The Notice also
17 provided the details of the case and the proposed settlement and the
18 specific options available to Class Members. In particular, it informed each
19 Class Member of the settlement formulas, thereby enabling Class Members
20 to make an informed decision about whether to opt out, submit a claim
21 form or take other or no action. In short, the Notice provided all essential
22 information that enabled Class Members to exercise their rights and make
23 informed decisions regarding the proposed settlement.

24 On October 23, 2009, CPT, the claims administrator, sent the Notice
25 and Claim Form packets via first class mail to the last known address of
26 each Class Member. Hitomi Decl. at ¶ 7. Federal courts have made clear
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1 that individual mailings to each Class Member's last known address is a
 2 sufficient form of notice, particularly where efforts are made to locate new
 3 addresses for any undelivered notice packets. *See e.g., Aguilar v.*
 4 *Melkonian Enters.*, 2006 U.S. Dist. LEXIS 80690, at *13 (E.D. Cal. Nov. 3,
 5 2006) (granting preliminary approval of parties' plan to mail notice to class
 6 members' last known address as identified through Defendants' records and
 7 to re-mail any returned mail, if necessary); *see also, White v. Nat'l Football*
 8 *League*, 41 F.3d 402, 408 (8th Cir. 1994), *abrogated on other grounds by*
 9 *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 618-620 (1997). CPT
 10 made reasonable efforts to locate any Class Members whose notice packets
 11 were returned. Hitomi Decl. at ¶¶ 6-9.

12 The notice procedure also provided adequate time for Class Members
 13 to submit claim forms, make objections, or opt out of the Settlement Class.
 14 Ex. A at ¶¶ 54-56. For Class Members who submitted a deficient claim
 15 form, the Claims Administrator provided notice of the deficiency and
 16 adequate opportunity to cure the defect, if subject to cure. Hitomi Decl. at ¶
 17 6, 8, 9. The Parties have agreed to accept all late-filed claims through
 18 January 7, 2010.

19 The Notice approved by the Court at the preliminary approval stage
 20 was the best notice practicable under the circumstances and fairly apprised
 21 Class Members of the proposed settlement terms and their options.

22 **B. Final Settlement Approval is Warranted**

23
 24 Pursuant to Federal Rule of Civil Procedure 23(e), the court must
 25 approve any proposed class action settlement. Court approval of class
 26 action settlements requires the following steps:

1 (1) Preliminary approval of the proposed settlement at a
2 preliminary hearing;

3 (2) Dissemination of mailed and/or published notice of the
4 settlement to all affected Class members; and

5 (3) A “formal fairness hearing,” or final settlement approval
6 hearing, at which Class Members may be heard regarding the settlement,
7 and at which evidence and argument concerning the fairness, adequacy, and
8 reasonableness of the settlement may be presented.

9 *Manual for Complex Litigation, Fourth* (4th ed. 2004) (“*Manual*”) §
10 21.632- 34.

11 The first two steps of this process are now complete. The first step
12 was completed on September 14, 2009 and September 23, 2009, when this
13 Court conducted a hearing and then granted preliminary approval to the
14 Settlement. Ex. B. In doing so, the Court determined that the Settlement
15 was within the range of possible final approval and that notice to the Class
16 Members of the Settlement’s terms and of the scheduling of the formal
17 fairness hearing should be distributed. Ex. B at ¶ 2, 6.

18 The second step in the class action settlement approval process,
19 dissemination of the Notice, is complete as well. In accordance with the
20 Court’s preliminary approval order, the Parties worked with CPT to
21 implement the Court-approved notice program, which employed the best
22 practicable means to disseminate to all Class Members notice of the
23 Settlement terms as well as the date and time of the final approval hearing.
24 Pursuant to the Court’s order, CPT sent the Notice to Class Members on
25 October 23, 2009.

26 The last step in the class action settlement approval process is the
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1 final approval hearing, at which the Court shall finally conclude whether
 2 the Settlement is fair, adequate, and reasonable. Fed. R. Civ. P. 23(e)(2).
 3 At the final approval hearing, scheduled on January 11, 2009, Class
 4 Members will have the opportunity to be heard regarding the Settlement,
 5 and Class Counsel will present evidence and argument in support of the
 6 Settlement. At the conclusion of the final approval hearing, the Court will
 7 decide whether to grant final approval of the Settlement and whether to
 8 enter a final order and judgment.

9
 10 **1. Each of the Relevant Criteria Supports Final Approval**

11 When evaluating the fairness, reasonableness, and adequacy of a
 12 settlement, courts consider some or all of the following factors: the strength
 13 of the plaintiff's case; the risk, expense, complexity, and likely duration of
 14 further litigation; the amount offered in the settlement; the extent of
 15 discovery completed and the stage of the proceedings; the experience and
 16 views of counsel; and the reaction of the class members to the proposed
 17 settlement. *Churchill Village*, 361 F.3d at 576; *Hanlon*, 150 F.3d at 1026.
 18 In addition, the Court must determine that the settlement was not the
 19 product of collusion between the negotiating parties. *Churchill Village*,
 20 361 F.3d at 576; *Hanlon*, 150 F.3d at 1026.

21
 22 **a. The Strength of Plaintiffs' Case Turns on an**
 23 **Untested Area of Law Creating Significant**
 24 **Risks to Plaintiffs and the Classes**

25 A critical factor in determining the strength of Plaintiffs' case is the
 26 fact that there is very little authority on the application of Labor Code § 212
 27 in the present context. Miller Decl. at ¶¶ 4, 19, 39 (to Counsel's
 28

1 knowledge, there are only two published decisions in other cases on Labor
2 Code § 212 in this context; Class Counsel Steven L. Miller and Scott A.
3 Miller represented plaintiffs in both cases). Plaintiffs maintain that they
4 would succeed at trial. Defendants, on the other hand, maintain that they
5 would succeed in defeating Plaintiffs' claims, either through summary
6 judgment or before the trier of fact. However, given the overall lack of
7 authority on the disputed issues here, there is uncertainty as to how the
8 question of Defendants' liability under Labor Code § 212 would be
9 resolved at trial.

10 Such uncertainty regarding the interpretation of Labor Code § 212
11 strongly supports that the Settlement is a good compromise for absent Class
12 Members. The Class Members submitting valid claims will receive
13 monetary benefits and avoid the risks of proceeding with a trial on an
14 untested theory of liability. *See* Miller Decl. at ¶¶ 21, 22, 39.

15 **b. The Complexity, Expense and Likely Duration**
16 **of Continued Litigation Weighs in Favor of**
17 **Final Approval**

18 Employment class action cases are expensive and time-consuming to
19 prosecute. However, this case presents a more difficult situation than most,
20 given the lack of legal authority surrounding the interpretation of Labor
21 Code § 212. Continued litigation of this action against Defendants would
22 likely be complex and expensive, due to the size of the class and the nature
23 of the claims. Miller Decl. at ¶¶ 4, 19, 39.

24 Furthermore, the Settlement avoids the need for a contested class
25 certification motion that would be time consuming and costly for Plaintiffs
26 to file, Defendants to oppose, and the Court to decide. In addition, if the
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1 Court were to deny such a motion for class certification, Class Members
2 would be left without a group remedy, and the issues presented here would
3 need to be litigated individually in a piecemeal, costly, and time-consuming
4 fashion. The Settlement also avoids a lengthy trial or trials that likely
5 would have involved testimony by numerous witnesses and experts. *See*
6 Miller Decl. at ¶¶ 21, 27, 38, 39.

7 Extensive, complex litigation will also result in substantial financial
8 risk to Class Members. SMX, Inc. and Seaton Corp. are staffing companies
9 who employ or employed the vast majority of Class Members. The
10 economic climate in the employee staffing industry is particularly
11 challenging during the present economic recession. The risk that extended
12 litigation and/or a substantial judgment against these Defendants would
13 render them insolvent was a factor strongly considered prior to entering
14 into the Settlement. Miller Decl. at ¶ 20.

15 **c. The Value of the Settlement Favors Final**
16 **Approval**

17 Under the Settlement, Defendants have agreed to pay up to a total of
18 \$977,000 (including attorneys' fees, costs, Plaintiffs' enhancements, and
19 costs of claims administration). Ex. A. at ¶ 37. Without admitting liability
20 for any violation of law, each of the Defendants has made arrangements so
21 that their current and future California employees can take advantage of
22 free check cashing services that are now in place for them. Ex. A at ¶ 34.

23 The Settlement provides for substantial benefits in terms of a cash
24 settlement payable in one payment and paid not long after the
25 commencement of the litigation. Miller Decl. at ¶ 24.

26 Upon commencing this Action, Plaintiffs promptly conducted formal
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1 and informal discovery regarding all Labor Code violations alleged.
2 Defendants provided sufficient information to quickly establish that many
3 of the claims alleged in the First Amended Complaint – specifically, those
4 for wages for time worked off-the-clock and expense reimbursement – had
5 little, if any, merit (and value). Plaintiffs established that their claims under
6 *Labor Code* § 212 were likely their strongest claims. As such, most of the
7 Maximum Settlement Amount is allocated to resolve these claims. Miller
8 Decl. at ¶ 27.

9 The amounts for which Class Members are eligible are not only in-
10 line with other similar settlements, but also commensurate with the value of
11 the claim adjusted for risk. Class Counsel believes the maximum value of
12 this case, were Plaintiffs to prevail at trial on a classwide basis, is
13 approximately \$1,994,400 (the vast majority of which accounts for
14 discretionary penalties). The maximum settlement value here represents a
15 49% recovery. In reaching this settlement, Class Counsel cautiously
16 factored 1) the risk of Defendants defeating class certification (which
17 would effectively preclude any recovery for most class members, whose
18 claims are too small to warrant individual suits), 2) the risk of Defendants
19 prevailing on the merits at trial, in a novel area of law with little case law to
20 guide the Court, 3) that the Court has discretion to reduce the penalties
21 awarded pursuant to the Private Attorneys General Act, *Labor Code* § 2698
22 *et. seq.*, 4) that the Class' actual damages represent only a small portion of
23 the recovery sought, with discretionary penalties representing the
24 remainder, and 5) that Plaintiffs' costs will increase exponentially as the
25 matter moves forward; in the event Plaintiffs prevail at trial, the amount
26 payable to the Class would effectively be reduced as a result. Class
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1 Counsel strongly believes the settlement represents a fair compromise of
2 the Class' claims. Miller Decl. at ¶ 28.

3 In short, the benefits obtained by the Class are substantial in relation
4 to the claimed harm suffered by the Class. Accordingly, the value of the
5 settlement – in both monetary and non-monetary terms – justifies the final
6 approval of the Settlement.

7 **d. Disclosure of Documents and Data**
8 **Demonstrating the Strengths and Weaknesses**
9 **of this Action was Completed Prior to Entering**
10 **into the Settlement**

11 The extent of discovery that has been completed and the stage of the
12 litigation are factors that courts consider in determining the fairness of a
13 settlement. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801
14 (1996); *see also Clark v. American Residential Services, LLC*, 175 Cal.
15 App. 4th 785 (2009). The Settlement was reached only after the Parties
16 exchanged substantive information through informal discovery, as well as
17 apprised each other of their respective factual contentions, legal theories,
18 and defenses. Thus, the Parties negotiated the proposed Settlement with
19 ample knowledge of the strengths and weaknesses of this case and the
20 amounts necessary to compensate Settlement Class Members for their
21 estimated damages.

22 The Parties engaged in extensive good-faith, arms-length
23 negotiations, including an 18 hour mediation session conducted before an
24 experienced mediator and subsequent extended settlement discussions.
25 Miller Decl. at ¶ 11. Given the nature of claims, tentative recovery for the
26 Classes, and other settlement terms, the fact that this settlement was
27 negotiated at arms-length is inescapable.

1 The Maximum Settlement Amount falls within a realistic range of
 2 outcomes at trial. Prior to commencing settlement discussions, and
 3 continuing thereafter until a settlement was finally reached, Class Counsel
 4 engaged in an exhaustive review of facts, evidence, and statistics necessary
 5 to establish the strengths and weaknesses of the Class' claims, the strengths
 6 and weaknesses of Defendant's potential defenses, and a range of potential
 7 outcomes at trial. *See Clark*, 175 Cal. App. 4th at 801. Class Counsel
 8 concluded that the largest recovery which the Class could anticipate at trial,
 9 if certification was granted and if the class prevailed on all meritorious
 10 theories in the Complaint, was approximately \$1,994,400. This would
 11 represent restitution and substantial discretionary penalties resulting from
 12 Defendants' alleged violation of Labor Code § 212. Miller Decl. at ¶ 27.
 13 The maximum settlement amount of \$977,000 represents a recovery of 49%
 14 of the maximum. As such, Class Counsel strongly believes that this
 15 represents a fair, reasonable, and adequate compromise of the Class' claims.
 16 Miller Decl. at ¶ 27-28.

17 **e. The Experience and Views of Counsel Favor**
 18 **Final Approval**

19 Class Counsel support the Settlement as fair, adequate, reasonable,
 20 and in the best interests of the Settlement Classes as a whole. Class
 21 Counsel believe this Settlement to be an excellent result for Settlement
 22 Class Members. *See Miller Decl.* at ¶¶ 4, 21-28, 44.

23 The endorsement of qualified and well-informed counsel of the
 24 settlement as fair is entitled to significant weight. Class Counsel have
 25 significant experience in class action litigation, particularly in the
 26 employment context. *See Miller Decl.* at ¶¶ 2-4, 19, 37. As previously
 27

mentioned, Class Counsel was among the first in the State of California to represent plaintiffs with claims under Labor Code § 212 and address the sufficiency of those claims before a court. Class Counsel are of the opinion that the Settlement is fair and in the best interest of the Class Members. Miller Decl. at ¶¶ 19, 37.

f. Class Members' Positive Reaction to the Settlement Favors Final Approval

Finally, and perhaps most importantly, courts examine the reaction of class members to determine if a settlement that directly affects their interests should be approved as fair, adequate, and reasonable. As of January 7, 2010, 631 Class Members had filed a valid claim. *See* Hitomi Decl. at ¶ 17.

Class Counsel have collectively litigated over a dozen cases similar to this one, with claims pursuant to Labor Code § 212 and related penalties pursuant to Labor Code § 2699; the claims rates in this case are consistent with those in other cases and have all been finally approved by California State and Federal Courts. Miller Decl. at ¶ 19-20.

Of most importance is the fact that no Class Member has objected to the Settlement here. Hitomi Decl. at ¶ 15. Moreover, only 1 Class Member has chosen to opt out of the Settlement. *Id.* at ¶ 11. In this action, the Court should construe the overwhelming non-opposition to and participation in the Settlement as strong indications of Class Members' support for the Settlement as fair, adequate, and reasonable.

For all of the reasons stated above, the Settlement proposed in this action is fair, reasonable and adequate.

C. The Settlement Classes Meet the Rule 23 Class Certification Requirements

In the preliminary approval order, the Court conditionally held that, for settlement purposes, the Settlement Classes satisfy the class certification criteria of Fed. R. Civ. P. Rule 23. Ex. B at ¶ 3. For the reasons discussed herein, the certification of the Settlement Classes for settlement purposes should be confirmed in a final approval order.

1. The Settlement Classes Are Sufficiently Numerous

The numerosity requirement is satisfied when joinder of all class members is impracticable. Fed. R. Civ. P. 23(a)(1). According to Defendant's records, there are over 150 members in each of the Settlement Classes. Miller Decl. at ¶ 32. Each of the six Settlement Classes is sufficiently numerous such that joinder is impracticable.

2. The Settlement Classes Share Common Questions of Law and Fact

To qualify for certification, proposed class members must share common questions of fact and law. Fed. R. Civ. P. 23(a)(2). Here, significant questions common to the members of each Settlement Class include whether Defendants issued paychecks to them during the Class Period that did not meet the criteria set forth in Labor Code § 212, and whether Class Members paid check cashing fees as a result. Further common questions turn on Defendants' employment practices as applied to all Class Members, including whether wage statements issued by Defendants to Class Members comply with California law, whether Defendants' pay all employees for all hours worked, and whether

1 Defendants timely paid their employees upon termination and/or
2 resignation. Thus, commonality exists among the Settlement Class
3 members.

4 **3. The Class Representatives' Claims are Typical of the**
5 **Proposed Class Members'**

6 Typicality is satisfied if the Class Representatives' claims share a
7 common element with the class claims because they arise from a common
8 practice or course of conduct. *Dukes v. Wal-Mart, Inc.*, 474 F.3d 1214,
9 1232 (9th Cir. 2007) (typicality satisfied where injuries Class Members
10 suffered were caused by defendant's alleged common practice across many
11 Wal-Mart stores); *see also, Hanlon*, 150 F.3d at 1019 ("representative
12 claims are 'typical' if they are reasonably coextensive with those of absent
13 Class Members; they need not be substantially identical"). Plaintiffs
14 Robert Adams, Chad Welch, Joseph Williams, and LaVail Charles, the
15 proposed Class Representatives, each has claims typical of the other Class
16 Members' claims. Plaintiffs allege that they, like the other Class Members,
17 were employed by one or more of the Defendants and were subject to the
18 Labor Code violations alleged in the Action, including the receipt of live
19 paychecks that were drawn on an out-of-state bank without any California
20 branches. Plaintiffs allege that, as a result, they were forced to incur check
21 cashing fees to obtain their wages. Defendants allegedly did not make
22 arrangements to provide Plaintiffs and other Class Members with a means
23 to cash their paychecks in California without charge. Also, because the
24 paychecks were drawn on an out-of-state bank, Plaintiffs allege that they
25 and other Class Members could not receive their wages on demand when
26 they presented their paychecks for cashing. Plaintiffs' and the Class
27

Members' claims are based on alleged injuries due to Defendant's alleged common practice of failing to comply with the provisions of the California Labor Code. Thus, the typicality requirement is satisfied in this case. Miller Decl. at ¶ 35.

4. The Class Representatives and Their Chosen Counsel are Adequate

In the preliminary approval order, the Court approved Plaintiffs Robert Adams, Chad Welch, Joseph Williams, and LaVail Charles as the class representatives. Ex. B at ¶ 4. Each of the Plaintiffs has demonstrated that they will vigorously represent the interests of the Class Members. Miller Decl. at ¶ 36. Furthermore, Plaintiffs retained competent counsel, experienced in employment class actions, to represent the Classes. Miller Decl. at ¶¶ 2-4, 37; *see also*, Ex. B at ¶ 4 (approving Plaintiffs' chosen counsel as Class Counsel).

5. The Settlement Classes also Satisfy the Rule 23(b) Requirements for Class Certification

The Settlement Classes also meet the requirements of Federal Rule of Civil Procedure Rule 23(b)(3). Rule 23(b)(3) requires common questions of law or fact to predominate over questions affecting individual Class Members, and the class action to be superior to other methods for efficient adjudication of the claims. Here, the claims involve Defendant's common employment practices, including their issuance of paychecks which allegedly do not comply with the requirements of California law. These alleged violations apply to all Class Members in the same manner. Common questions of law and fact, specifically whether Defendants issued paychecks to Class Members that met the requirements of Labor Code §

1 212 and whether Class Members could cash the paychecks only by paying
2 a check cashing fee, predominate over any individual questions.

3 Furthermore, a class action is the superior method for settling this
4 controversy because the claims of the individual Class Members are
5 relatively small, making it uneconomical and essentially unfeasible for
6 them separately to litigate their claims. *See Hanlon*, 150 F.3d at 1023
7 (finding class action superior where costs of individual claims would dwarf
8 individual recovery).

9 **D. Court Approval of the PAGA Penalty Portion of the**
10 **Settlement**

11 Pursuant to California Labor Code section 2699(l), the court must
12 review and approve the settlement of penalties sought under that Labor
13 Code section. Cal. Lab. Code § 2699(l). For all of the reasons stated
14 above, the Settlement is fair, reasonable and adequate, and should be
15 approved. As part of the Settlement, Defendants have agreed to pay a
16 combined total of \$25,000 to settle the claims of the two Labor Code
17 Section 2699 Classes, of which the substantial payment of \$18,750 will be
18 paid to the California Labor and Workforce Development Agency. This
19 portion of the Settlement should be approved.

20 **IV. CONCLUSION**

21
22 For all the foregoing reasons, Plaintiffs requests that the Court grant
23 final approval of this Settlement and approve distribution of the settlement
24 funds to the State of California and all Settlement Class Members, as set
25 forth in the Stipulation.

1
2 Dated: January 13, 2010

Respectfully Submitted,

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4
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